IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

Criminal Appeal No. 303-DB of 2006.
DATE OF DECISION: 17.1.2007
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Baldev Kaur and another.

..APPELLANTS

VS.

State of Punjab.

..RESPONDENT

CORAM: HON'BLE MR. JUSTICE MEHTAB S. GILL.
HON'BLE MR. JUSTICE ARVIND KUMAR,

Present:- **Mr. Baldev Singh, Senior Advocate with**
Mr. Sudhir Kumar, Advocate
for the appellants.

Mr. J.S. Dhillon, DAG Punjab assisted by
Mr. Devinder Dutt Sharma, Advocate
for the complainant.
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ARVIND KUMAR, J.

The instant appeal is directed against the judgment and order dated 30.3.2006 passed by learned Addl. Sessions Judge, Barnala whereby in case FIR No. 60 of 30.5.1996, registered under Sections 304-B/34 IPC, at police station Tapa, the appellants have been convicted under Sections 498-A and 304-B of Indian Penal Code. Accused-appellant Ranjit Singh has been sentenced to undergo imprisonment for life whereas accused-appellant Baldev Kaur has been awarded rigorous imprisonment for 10 years for committing an offence under Section 304-B IPC and both of them have been further sentenced to undergo rigorous imprisonment for two years with a fine of Rs.2000/- each, in default thereof to undergo rigorous imprisonment for six months under Section 498-A IPC. The substantive sentences were ordered to be run concurrently.

The facts necessary for the disposal of the instant appeal may be noticed first.

On 30.5.1996 informant Bahadur Singh got recorded his statement to ASI Gurcharan Singh, police Station Tapa to the effect that he

had performed marriage of his daughter Jaswinder kaur with Ranjit Singh @ Makhan son of Raghbir, resident of Roorki Kalan in the month of January 1996. He gave 14 tolas gold, Rs.55000/- cash, one scooter, fridge, cooler, sofa set, bed, almirah etc. as dowry. In total he spent a sum of Rs.1.5 lacs in the said marriage and fulfilled all the demands so raised by Raghbir Singh, father-in-law of his daughter. Even after about seven days of the marriage, when his daughter came to her parental house, then she told him about the demand of money as "Shagun", upon which he handed over her a sum of Rs.8000/-, which she further handed over to her husband Ranjit Singh. The complainant Bahadur Singh in his statement further narrated that as to how when his daughter again came to them after 20 days of the marriage, she told them about the demand put by her in-laws of more articles and pursuant thereto he again purchased articles worth Rs.1500/- and dropped them at the house of his daughter at Roorki Kalan. The complainant also goes on stating about the other demand made by in-laws of his daughter qua the articles of good quality, as the earlier purchased articles were not up to their satisfaction. The complainant Bahadur Singh further mentioned the episode of 29.5.1998 when his wife Gurmail Kaur went to the house of in-laws of her daughter at village Roorki Kalan, where Jaswinder Kaur narrated her about the harassment received by her at the hands of her in-laws on account of their demand of a car and apprehending that she might be killed by her in-laws and requested to take along with her. However, his wife consoled her daughter and came to her house at village Kale Ka. He further mentioned that on 30.5.1996 at about 3.30 p.m. they came to know about the death of their daughter Jaswinder Kaur and on reaching village Roorki Kalan, they found dead body of their daughter Jaswinder Kaur lying on a cot in the courtyard of her in-laws house with injuries on her person. He suspected that Raghbir Singh, father-in-law, Baldev Kaur, mother-in-law, Raj Kaur, sister-in-law and Ranjit Singh, husband of Jaswinder Kaur have murdered his daughter.

On the basis of said statement, FIR No.60 dated 30.5.1996 (Ex.PE) for an offence under Section 304-B/34 IPC was registered at police station Tapa, district Sangrur.

Investigating agency swung into action. Gurcharan Singh ASI (PW.6) reached at the spot and prepared the inquest report (Ex.PC) of the

dead body of Jaswinder Kaur. Thereafter, he took the dead body to Civil Hospital, Barnala for post-mortem examination. Dr. Bhalinder Singh (PW.2) conducted the post-mortem examination and vide report Ex.PA he noticed as many as six injuries on the dead body. In his opinion, the cause of death was due to asphyxia by throttling.

PW.6 ASI Gurcharan Singh recorded the statements of the witnesses under section 161 Cr.P.C. and prepared the site plan of the place of occurrence. The accused were arrested and thereafter on completion of usual formalities of investigation, final report under Section 173 Cr.P.C. was filed against Raghbir Singh, Baldev Kaur and Ranjit Singh only for their trial.

After commitment of the case by the learned Illaqa Magistrate, the then learned Addl. Sessions Judge, Barnala framed charges against the accused-appellants for commission of an offence punishable under Section 302 IPC with the alternative charges under Sections s 304-B read with Section 34 IPC and under Section 498-A IPC as well.

The prosecution, in all, examined as many as 6 witnesses viz. Gurjant Singh son of Pritam Singh as PW.1 , Dr. Bhalinder Singh as PW.2, Dev Raj Draftsman as PW.3, Bahadur Singh, Gurmail Kaur, father and mother of the deceased as PW.4 and PW.5 respectively and ASI Gurcharan Singh as PW.6. Thereafter, the prosecution closed its evidence.

The appellants denied the prosecution allegations. Their stand was that the deceased, in a disturbed mental state committed suicide by handing herself. The accused-appellants examined as many as five witnesses in their defence. Rajinder Singh constable was examined as DW.1, Jagtar Singh @ Avtar Singh as DW.2, Gurcharan Singh son of Harchand as DW.3, Major Singh son of Sukhdev Singh as DW.4 and DSP Darshan Singh as DW.5.

It is apposite to mention here that the trial court earlier vide judgment dated 26.11.1998 convicted and sentenced the accused Baldev

Kaur, Ranjit Singh and Raghbir Singh for committing an offence under Section 304-B IPC. They all filed criminal appeal No. 563-DB of 1998 in this Court and thereby questioned the legality of the said judgment and order of conviction. The State of Punjab also filed Crl. Appeal No. 159-DB of 1999 whereas the complainant Bahadur Singh filed Crl. Revision No. 561 of 1999 seeking enhancement of the sentence imposed upon the appellants. A Division bench of this Court vide order dated February 1,2006 remanded back the case to the trial court, while setting aside their conviction and sentence recorded by the trial court, with a direction to proceed with the trial of the case from the stage of Section 235 Cr.P.C. and to pass order afresh in accordance with law. However, the criminal appeal as well as revision preferred by the State of Punjab and the complainant were dismissed vide the same order, for having become infructuous.

Pursuant to the directions given by this Court, the trial court took up the matter again. However, during the re-hearing of the case before the trial court, accused Raghbir Singh was reported to have died. Consequently, proceedings against the accused Raghbir Singh were abated by the trial court vide order dated 25.3.2006.

Thereafter, the learned trial court, on appreciation of the evidence led by the prosecution, held both the accused-appellants guilty of death of Smt. Jaswinder Kaur and accordingly, both the appellants have been convicted and sentenced by the trial court, in the manner indicated above, which has necessitated the accused-appellants to prefer the instant appeal, impugning the judgment and order of their conviction and sentence.

We have heard learned counsel for the parties and with the assistance rendered by them, have gone through the record of the case carefully.

There was a charge of homicide, mainly on the basis of statement of PW.1 Gurjant Singh, claiming that on the date of occurrence i.e. 30.5.1996 he had visited the house of the accused wherein all the family members of the accused and so as Jaswinder Kaur were present and during discussion on the question of demand of dowry, they started abusing him followed by Baldev Kaur pushing Jaswinder Kaur in room, Ranjit Singh caught hold of her legs and Raghbir Singh exhorted to kill her by pressing her neck and similar exhortation was given by Raj Kaur and in his presence

they all strangulated her to death. His statement is not worthy of any credence. He is the maternal uncle of the deceased and it is highly unnatural that the accused party would commit such like crime in his presence. Secondly had he been present at the time of occurrence he would definitely intervened to save his niece or raise the noise which he admittedly did not do. His natural impulse was to call neighbourers to narrate the occurrence or to visit police post village Rurki Kalan, but again he did not report the matter to the police about the occurrence. He further claims that after visiting the village of the complainant he returned to the place of occurrence at 7.30 p.m. and at that time the police including ASI Gurcharan Singh was present. PW.6 ASI Gurcharan Singh has stated that he had prepared the site plan at about 8.15 p.m. and when he was preparing it, Gurjant Singh had arrived and in this situation, site plan should have been prepared at the demarcation of PW.1 Gurjant Singh, which is missing in the rough site plan and so as scaled site plan (Ex.PD) subsequently prepared by PW.3 Devraj. Thus, the sequence of events and his act and conduct warrants that he was not present at the place of occurrence and had not seen the occurrence. Accordingly, the appellants have not been rightly convicted for the charge of homicide.

It has been urged on behalf of the learned counsel for the appellant that there is a delay in sending the special report to the Illaqa Magistrate which reached at 12.25 a.m. on the night intervening 30/31.5.1996 and as such, FIR is ante-timed. The contention is meritless. It is not as if every delay in sending the special report to the Illaqa Magistrate would necessarily lead to the interference that the FIR has not been lodged at the time stated or has been ante-timed or that the investigation is not fair. If in a case, it is found that the FIR was recorded without delay and the investigation started on that FIR, then improper and objectionable the delayed receipt of the report by the Magistrate concerned, that cannot by itself justify the conclusion that the investigation was tainted and the prosecution unsupportable. In the instant case PW.4 Bahadur Singh, on receipt of information on 30.5.1996 at 3.30 p.m. about death of his daughter Jaswinder Kaur in her in-laws house in village Rurkee Kalan along with others visited the village where he found his daughter Jaswinder Kaur lying dead. Then he visited police post Tapa, which is at a distance of about 7

Kms. and lodged the FIR at 5.30 p.m., so recorded by PW.6 Gurcharan Singh, which also took some time in completion and the special report was in the hands of Illaqa Magistrate, Barnala on the same night at 12.25 a.m., at a place which again is at a distance of about 18 Kms. from police station Tapa, as stated by PW.6 ASI Gurcharan Singh, though both the places might be connected with metaled road, but it cannot be ignored that it was a night time and in backdrop of this sequence of events it cannot be said that the delivery of special report was delayed, to say it has effected the case of the prosecution especially when FIR was recorded without delay and the investigation had already started as ASI Gurcharan had already reached at 7.30 p.m.

Section 304-B of the Indian Penal Code lays down that where the death of a woman is caused by any burns or bodily injury or occurs otherwise than under normal circumstances within seven years of her marriage and it is shown that soon before her death she was subjected to cruelty or harassment by her husband or any relative of her husband in connection with any demand of dowry, such death shall be called “dowry death” and such husband or the relative shall be deemed to have caused her death. Section 113-B has also been inserted in the Evidence Act. It deals with the presumption of “dowry death” and proclaims that when the question is whether a person has committed a dowry death of a woman and it is shown that soon before her death, such woman had been subjected by such person to demand of dowry, the court shall presume that such person had caused “dowry death”. It can, therefore, be seen that irrespective of the fact whether the accused has any direct connection with the death or not, he shall be presumed to have committed the “dowry death”provided the other requirements mentioned above are satisfied. Expression “soon before the death” would imply that the interval should not be too long between time of making the demand and the death. It contemplates reasonable time which as earlier noticed, has to be understood and determined under the peculiar circumstances of each case. In other words, demand of dowry, cruelty or harassment based upon such demand and the date of death should not be too remote in time, under the circumstances, be treated as having become stale enough. In the instant case, the death of Smt. Jaswinder Kaur had taken place just after few months of the marriage. She had a married life to less

than 6 months. The case of the prosecution mainly rests on the statement of PW.4 Bahadur Singh and PW.5 Gurmail Kaur, father and mother respectively of the deceased. The statement of PW.4 Bahadur Singh suggests that even at the time of the marriage Rs.1,50,000/- were spent, as this was indicated by Raghbir Singh (now deceased), father-in-law of his daughter Jaswinder Kaur. Even after 7-8 days of the marriage when Jaswinder Kaur visited her parental house, she conveyed that the accused are demanding dowry and also the amount of "Shagun" for which Rs.8000/- were given for further handing over to Ranjit Singh, the husband who was accompanying Jaswinder Kaur. His statement further suggests that upon subsequent visit of Jaswinder Kaur, after about 20 days, similar complaint was made by her which compelled PW.4 Bahadur Singh to purchase certain articles worth Rs.1500/-, which his daughter took to her matrimonial home in a tractor and further when Bahadur brought his daughter during harvesting season, she was again made a complaint of demand of more dowry of good quality. It has also come in evidence of PW.4 that just one day before the death of Jaswinder Kaur, his wife Gurmail Kaur (PW.5) had gone meet her where Jaswinder Kaur expressed apprehension to her life and forced her to take alongwith her as there was demand of dowry of maruti car from the accused, in the dowry, for which Gurmail Kaur assured that she would be brought after consultation with her father (PW.4 Bahadur Singh). The statement of PW.4 is duly corroborated by PW.5 Gurmail Kaur with regard to demands, harassment and the event of her visit a day prior to her death. They were subjected to lengthy cross-examination. Apart from minor discrepancies, which do not go to the root of the case, their statements are corroborated on material particulars so far the demands and harassment to Jaswinder Kaur is concerned. It has also not be forgotten that due to minor discrepancies in the statements of simpleton and illiterate witnesses, their testimonies cannot be discarded. Their statements indict the series of incidents forming part of the same transaction which culminated in the death of Jaswinder Kaur. The deceased was given disrespect right from the beginning from time to time and being harassed on account of the demands. The sequence of events, discussed above, suggests that cruelty and harassment on account of said demand were alive till her death. The learned counsel for the appellant has laid much stress that there is no independent

corroboration to the statements of both the witnesses, who are closely related to the deceased. The contention is again meritless. The statements of PW.4 Bahadur Singh and PW.5 Gurmail Kaur cannot be rejected merely on the ground of relations of deceased. It is, but natural, that instance of cruelty, harassment or demand of dowry would remain within the personal knowledge of near relations and they would be the best persons to depose about the same. Therefore, the evidence of physical and mental torture of the deceased coming from the father and mother of the deceased need not to be discarded simply on the score of absence of independent corroboration.

The learned defence counsel has also argued that no Panchayat was convened and matter was not reported to the police with regard to the demand of dowry and harassment and it is fatal to the prosecution case. The contention is again meritless. No doubt, no Panchayat was convened to resolve the issue but it cannot be over looked that this is sensitive subject on which one avoid talking to other to save the honour of the family amongst the brotherhood in the village as in our orthodox society, firstly, efforts are made to save the marriage and the matter is not raked further to wash dirty linen in public. Therefore, if the matter was not reported to the Panchayat, it does not affect the case of the prosecution at all.

The learned counsel for the appellants has not referred to the evidence led in defence including that of DSP Darshan Singh (DW.3) for obvious reasons that when the case was investigated by DSP Darshan Singh, it was only found that Raj Kaur (sister-in-law) should not be challaned.

The case of Baldev Kaur appellant, so far demand, cruelty and harassment is concerned, is distinguishable as that of appellant Ranjit Singh. She is mother-in-law of the deceased. The statements of PW.4 Bahadur Singh and PW.5 Gurmail Kaur are omnibus in relation to the harassment and mal-treatment by her. There are no specific instances attributed against her. The tenor of the evidence of the said witnesses suggests that even at the time of marriage, there was a demand only by Raghbir Singh, father-in-law (now deceased) and even after the marriage when the deceased had visited her parental house, after 7-8 days, then Rs.8000/-, the amount of “Shagun” was given to her, who had further given the same to the appellant Ranjit Singh, who was accompanying her. In the last, the demand in clear terms

was of maruti car. Baldev Kaur has nothing to do with the said demand, which is primarily for the use of accused Ranjit Singh. In **Salamat Ali & Ors. Vs. State of Bihar, 1997 SCC (Crl.) 842,** it has been held that demand of scooter predominantly must have been raised by the husband. It cannot be expected that the father-in-law would be demanding a scooter for himself or that the mother-in-law needed it for her use and acquitted the father-in-law and mother-in-law and convicted the husband. Thus, following the ratio laid down in Salamat Ali's case (supra), accused-appellant Baldev Kaur deserves acquittal.

So far as appellant Ranjit is concerned, the case of the prosecution is consistent coming from the mouth of PW.4 Bahadur Singh and PW.5 Gurmail Kaur. Their statements corroborates on material particulars in relation to harassment and demands of dowry including that of maruti car. He, being the husband, is directly beneficiary to the said demand of car. The death of Jaswinder Kaur has occurred otherwise than in normal circumstances in the matrimonial home. Admittedly, the death has occurred within 7 years of the marriage. It is duly proved that soon before her death she was treated with cruelty in connection with aforesaid demands of dowry and all the ingredients of Section 304-B IPC are satisfied. The counsel for the accused-appellant Ranjit has argued that sentence of life imprisonment is excessive. The contention is meritless. The deceased has died in the matrimonial home at the very thresh-hold of her married life. Therefore, the appellant Ranjit deserves no leniency in the matter of sentence awarded to him by the trial court.

For the reasons mentioned above, the instant appeal to the extent of appellant Baldev Kaur is allowed, thereby acquitting her of the charges framed against her. She be set at liberty, if not required in any other case. The appeal qua appellant Ranjit Singh is dismissed.

(ARVIND KUMAR)
JUDGE

JANUARY 17 ,2007 **(MEHTAB S. GILL)**
Jiten **JUDGE**